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lebronze alloys SAS

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEBRONZE ALLOYS SAS, a France société  
par actions simplifiée,

Plaintiff,

vs.

TESLA MOTORS, INC., a Delaware  
corporation,

Defendant.

Case No. 3:19-cv-02918

**COMPLAINT FOR  
BREACH OF CONTRACT,  
BREACH OF THE COVENANT OF GOOD  
FAITH AND FAIR DEALING,  
FRAUD AND DECEIT;  
DEMAND FOR JURY TRIAL**

1 Plaintiff lebronze alloys SAS (“LBA”), for its Complaint against Defendant Tesla Motors,  
 2 Inc. (“Tesla”), alleges as follows:

### 3 SUMMARY OF COMPLAINT

4 1. Plaintiff LBA is a French manufacturer and seller of metal alloy parts for use in  
 5 various industrial applications, which sells a part to Defendant Tesla that is used by Tesla in the  
 6 motors for its vehicles. By February 2019, Tesla had failed to pay LBA €1,559,420.06  
 7 (approximately \$1,768,460.32) for goods delivered to Tesla and had caused LBA additional  
 8 damages. Faced with the prospect of being sued, Tesla procured from LBA an amendment to the  
 9 agreement between the parties. Tesla has failed to perform the agreement and the amended  
 10 agreement. In fact, at the time it was procuring the amended agreement, Tesla kept secret from  
 11 LBA the facts that it intended not to order good faith quantities of the part, that it had already  
 12 decided to stop purchasing the part from LBA, that it had redesigned the part, and that it intended  
 13 to prematurely terminate the agreement. By this Complaint, LBA seeks money damages for  
 14 Tesla’s breach of contract, breach of the covenant of good faith and fair dealing, and fraud and  
 15 deceit.

### 16 JURISDICTION AND VENUE

17 2. Subject matter jurisdiction is proper in this Court based on diversity of citizenship,  
 18 28 U.S.C. § 1332. Complete diversity between the parties exists, as Plaintiff LBA is a citizen of  
 19 France, while Defendant Tesla is a Delaware corporation with its principal place of business in  
 20 California and hence a citizen of those States. The amount in controversy exceeds the sum or  
 21 value of \$75,000.00, exclusive of interest and costs.

22 3. This Court has personal jurisdiction over Tesla, which has its principal place of  
 23 business in Palo Alto, California and is therefore domiciled within this State and this District.  
 24 Furthermore, the contract between the parties specifies that if a dispute between the parties cannot  
 25 be resolved through good faith negotiations within a reasonable time, federal courts sitting in the  
 26 Northern District of California and the state courts of California have exclusive jurisdiction to  
 27  
 28

1 determine such disputes, and that the parties irrevocably submit to the exclusive jurisdiction of  
2 those courts.

3 4. Venue is proper in this Court because, among other things, Tesla has its principal  
4 place of business in Palo Alto, California, is subject to the Court's personal jurisdiction with  
5 respect to this civil action, and is a resident of the Northern District of California. Furthermore,  
6 the contract between the parties specifies that if a dispute between the parties cannot be resolved  
7 through good faith negotiations within a reasonable time, federal courts sitting in the Northern  
8 District of California and the state courts of California have exclusive jurisdiction to determine  
9 such disputes, and that the parties irrevocably submit to the exclusive jurisdiction of those courts.  
10 In addition, as described below, a substantial part of the events or omissions giving rise to the  
11 claims stated herein occurred in this District.

#### 12 **THE PARTIES**

13 5. Plaintiff lebronze alloys SAS ("LBA") is a France société par actions simplifiée,  
14 with its principal place of business in Suippes, France. Prior to December 1, 2016, LBA was  
15 known as lebronze industriel SAS. As of December 1, 2016, lebronze industriel SAS changed its  
16 name to lebronze alloys SAS. lebronze alloys SAS will be referred to herein as "LBA." LBA is a  
17 manufacturer and seller of a wide range of products composed of copper alloys, copper, nickel  
18 alloys, aluminum alloys, specialty steels, titanium and nickel superalloys. LBA's products are  
19 used in many major industries such as aerospace, oil and gas, power, railway, and automobiles,  
20 among others.

21 6. Defendant Tesla Motors, Inc. ("Tesla") is a Delaware corporation with its principal  
22 place of business in Palo Alto, California. Tesla is a manufacturer and seller of electric powered  
23 automobiles.

#### 24 **FACTUAL BACKGROUND**

25 7. LBA and Tesla entered into a written contract pursuant to which LBA supplies a  
26 particular metal part to Tesla. The part is known as C101 Endring, Rotor, 3DU, 1M (the  
27 "Endring"). Tesla uses the Endring as a component in the electric motors in its vehicles.

1           8.       The parties agreed to several documents, namely, the Production Pricing  
2 Agreement, Tesla Motors, Inc. General Terms and Conditions for Prototype or Production Parts  
3 or Service, and an Amendment to Tesla Motors, Inc. General Terms and Conditions for Prototype  
4 or Production Parts or Service. Those documents are collectively referred to as the "Agreement."  
5 A true and correct copy of the Agreement is attached hereto as Exhibit A. As described below,  
6 the parties subsequently agreed to the Amended and Restated Production Pricing Agreement,  
7 hereinafter referred to as the "Amended Agreement". A true and correct copy of the Amended  
8 Agreement is attached hereto as Exhibit B.

9           9.       Tesla placed various purchase orders under the Agreement for volumes of the  
10 Endrings.

11           10.      LBA dutifully supplied the Endrings in response to those orders by Tesla.

12           11.      Tesla, however, failed to pay LBA in full for the Endrings ordered and delivered  
13 pursuant to the Agreement.

14           12.      LBA made numerous efforts to get Tesla to pay the amounts Tesla owed to LBA.  
15 LBA convened meetings, sent e-mails and letters, and initiated numerous telephone calls in an  
16 effort to get Tesla to pay what it owed, to answer any questions Tesla may have had, and to  
17 resolve any issues. In addition, LBA demanded reasonable assurances of performance by Tesla.

18           13.      LBA's efforts to get Tesla to pay what Tesla owed LBA were mostly ignored.  
19 Despite good faith efforts by LBA over a reasonable period of time to obtain payment, Tesla did  
20 not pay the amounts Tesla owed to LBA nor did Tesla provide reasonable assurance of  
21 performance.

22           14.      As of February 2019, Tesla owed LBA €1,559,420.06 (approximately  
23 \$1,768,460.32) for Endrings Tesla ordered and LBA had delivered to Tesla.

24           15.      In addition, Tesla had caused LBA other harm as a result of its failure to pay,  
25 including inability to factor the receivables due from Tesla due to Tesla's lack of  
26 creditworthiness, harm to LBA's reputation, increased costs of doing business, interest, attorneys'  
27 fees, and costs.



16. LBA demanded payment from Tesla and eventually was required to inform Tesla that LBA would file suit, if necessary, to enforce its legal rights.

17. As a result, Tesla induced LBA to enter into the Amended Agreement dated February 22, 2019. Among other things, the Amended Agreement reaffirmed the applicability of the General Terms and Conditions; forecasted that Tesla would purchase 250,000 vehicle sets from LBA from September 2018 until February 2020; required Tesla to discuss in good faith volume and price of products; established a contract term through February 29, 2020; required Tesla to discuss in good faith volume and pricing beyond that period; and provided for automatic renewal of the Amended Agreement if the parties did not reach a new agreement regarding volumes and pricing.

18. Tesla has not performed the terms of the Agreement and the Amended Agreement.

19. On April 17, 2019, Tesla, without notice, requested an immediate telephone conference call, during which Tesla purported to give verbal notice of termination of the Agreement and the Amended Agreement, without advance notice and contrary to the terms of the Agreement and the Amended Agreement. This constituted a breach, repudiation and anticipatory breach of the Agreement and the Amended Agreement.

20. Tesla has admitted to LBA that during the fourth quarter of 2018, before entering into the Amended Agreement, Tesla had decided to change the design of the Endring, such that it will no longer purchase the Endring from LBA. Tesla has also admitted that it has been discussing a supply relationship with other manufacturers but that LBA was not told of those negotiations or allowed to bid to supply the new designed part.

21. Thus, while making the promises contained in the Amended Agreement, LBA is informed and believes that Tesla intentionally concealed the fact that it had already decided to not make further orders of the Endrings after the beginning of 2019, to remove LBA from Tesla's list of suppliers, and to end the contract before February 29, 2020.

22. Tesla has not acted in good faith toward LBA. The Amended Agreement was signed February 22, 2019 but within weeks (by April 1, 2019) Tesla informed LBA that for the

1 third and fourth quarters of 2019, the volume of Endrings ordered would decline to 4000 per  
2 week. LBA asked Tesla after the Amended Agreement was entered into to issue purchase orders  
3 in accordance with the Amended Agreement. Tesla did not do so. In fact, epitomizing Tesla's  
4 bad faith, Tesla placed a release for a total of one Endring, which is only half the number  
5 necessary to build a single car.

6 23. As a further example of Tesla's bad faith toward LBA, Tesla refused a shipment of  
7 Endrings it had ordered from LBA, claiming that some of the parts were defective. LBA sent a  
8 representative from France to Tesla's factory in Nevada and agreed to rework any parts needing  
9 it. After LBA arranged for transportation, reworking, and re-delivery of the parts, Tesla abruptly  
10 changed its position and notified LBA that Tesla wanted to keep all of the parts, as-is and without  
11 reworking. LBA is informed and believes that this indicates that the parts as originally delivered  
12 were without defects.

### 13 **FIRST CLAIM FOR RELIEF**

#### 14 **BREACH OF CONTRACT**

15 24. LBA incorporates by reference the allegations of Paragraphs 1 – 23 as though fully  
16 set forth herein.

17 25. LBA and Tesla are parties to the Agreement and Amended Agreement, as alleged  
18 above.

19 26. Pursuant to the Agreement and the Amended Agreement, Tesla reaffirmed the  
20 applicability of the General Terms and Conditions; agreed to purchase a forecasted volume of  
21 250,000 vehicle sets from September 2018 until February 2020; agreed to a term of the Amended  
22 Agreement through February 29, 2020; agreed to discuss in good faith volumes and pricing  
23 beyond that period; and agreed to automatic renewal if the parties did not make a new agreement  
24 regarding volumes and pricing. Tesla also agreed to resolve any dispute through good faith  
25 negotiations and to discuss in good faith volumes and pricing of products.

1           27.     Tesla has filed to perform its promises, duties, and obligations in the Agreement  
2 and the Amended Agreement and has repudiated and anticipatorily breached the Agreement and  
3 the Amended Agreement.

4           28.     LBA has performed all obligations, covenants and conditions required of it under  
5 the Agreement and the Amended Agreement. To the extent any of LBA's obligations, covenants  
6 and conditions has not yet come due or that performance has been delayed, it has been excused or  
7 waived by Tesla's breaches of the Agreement and the Amended Agreement.

8           29.     As a result of Tesla's unexcused and unjustified breaches of the Agreement and the  
9 Amended Agreement, LBA has been damaged and will continue to incur damages in an amount  
10 according to proof, plus interest, attorneys' fees, and costs.

11           WHEREFORE, LBA prays for judgment as set forth below.

12                               **SECOND CLAIM FOR RELIEF**

13                   **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

14           30.     LBA incorporates by reference the allegations in Paragraphs 1 – 29 as though fully  
15 set forth herein.

16           31.     Inherent in every agreement is a covenant of good faith and fair dealing, such that  
17 the parties promise to act in good faith with respect to the subject matter thereof, and that each  
18 party will not take any action or refrain from taking any action that will deprive the other party of  
19 the benefits of the agreement.

20           32.     In addition to the covenant of good faith and fair dealing implicit and inherent in  
21 every agreement, Tesla explicitly promised in the Agreement to act in good faith toward LBA.  
22 For example, Tesla expressly promised in the Agreement to discuss in good faith volumes and  
23 pricing. As another example, Tesla expressly promised in the Agreement to meet with LBA to  
24 discuss in good faith potential cost savings in the production process. As a further example, Tesla  
25 expressly promised in the Agreement that it would endeavor to resolve any dispute arising under  
26 or relating to the Agreement through good faith negotiations.

1           33. In addition to the covenant of good faith and fair dealing implicit and inherent in  
2 every agreement, Tesla explicitly promised in the Amended Agreement to act in good faith  
3 towards LBA. For example, Tesla expressly promised in the Amended Agreement to endeavor to  
4 resolve any dispute through good faith negotiations and promised to discuss in good faith volumes  
5 and pricing of products.

6           34. Tesla has breached the covenant of good faith and fair dealing by acting and failing  
7 to act as alleged above. In so doing, Tesla has acted to deprive LBA of the benefits of the  
8 Agreement and Amended Agreement between them.

9           35. As a direct and proximate result of Tesla's breach of the covenant of good faith  
10 and fair dealing, LBA has and will continue to incur damages in an amount according to proof,  
11 plus interest, attorneys' fees, and costs.

12                       WHEREFORE, LBA prays for judgment as set forth below.

13                               **THIRD CLAIM FOR RELIEF**

14                                       **FRAUD AND DECEIT**

15           36. LBA incorporates by reference the allegations of Paragraph 1 – 35 as through fully  
16 set forth herein.

17           37. Tesla made the promises and representations described above and concealed the  
18 material information described above.

19           38. Tesla made those promises and representations and concealed that information,  
20 with the intention of inducing LBA to act as it did.

21           39. LBA is informed and believes that Tesla acted intentionally in making those  
22 promises and representations and concealing that information. LBA is informed and believes that  
23 Tesla knew that the promises and representations were false when made or, alternatively, Tesla  
24 lacked a reasonable ground to believe them to be true when made.

25           40. LBA relied on Tesla's promises and representations in acting as it did.  
26  
27  
28



1 41. LBA was unaware of the falsity of Tesla's promises and representations when it  
2 relied on Tesla's promises and representations and was justified in relying on Tesla's promises  
3 and representations.

4 42. Tesla intended that LBA would rely on Tesla's promises and representations.

5 43. As a proximate result of Tesla's false promises, representations, and concealment  
6 of facts, LBA has suffered injury and harm, and will continue to incur damages in an amount  
7 according to proof, plus interest, attorneys' fees, and costs.

8 44. Tesla's acts were committed fraudulently, with malice toward LBA and in order to  
9 oppress LBA. Therefore, an award of exemplary damage is appropriate, in order to punish Tesla  
10 and to make an example of its conduct.

11 WHEREFORE, LBA prays for judgment as set forth below.

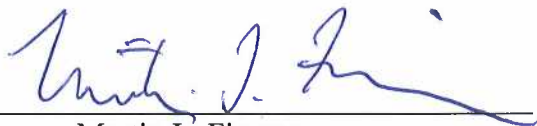
12 **PRAYER FOR RELIEF**

13 WHEREFORE, LBA prays for judgment against Tesla as follows:

- 14 1. For a judgment in its favor and against Tesla;  
15 2. For money damages in an amount according to proof;  
16 3. For exemplary damages;  
17 4. For interest, attorneys' fees, and costs; and  
18 5. For such other and further relief as the Court may deem just and proper.  
19

20 Dated: May 28, 2019.

DAVIS WRIGHT TREMAINE LLP

21  
22 By:   
23 Martin L. Fineman

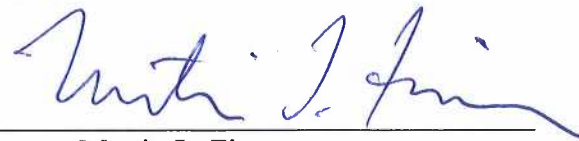
24 Attorneys for Plaintiff  
25 lebronze alloys SAS  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff lebronze alloys SAS hereby demands a trial by jury of all issues so triable.

Dated: May 28, 2019.

DAVIS WRIGHT TREMAINE LLP

By:   
Martin L. Fineman

Attorneys for Plaintiff  
lebronze alloys SAS